



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,400	01/24/2002	Curtis H. Porter	OPD002CP-1	1607

7590 11/12/2004
ORSCHELN MANAGEMENT CO
2000 US HWY 63 SOUTH
MOBERLY, MO 65270

EXAMINER

NGUYEN, XUAN LAN T

ART UNIT PAPER NUMBER

3683

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/057,400	PORTER ET AL.	
	Examiner	Art Unit	
	Lan Nguyen	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10 and 15 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-19 and 21 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8, 9, 11-14 and 20 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Drawings

1. Applicant's argument about the drawing objection has been considered but found to be non-persuasive. On page 8, lines 4 and 5 of the specification, it states that switches 30 extend into slot 31. Figure 3 shows only one limit switch 30 extending into slot 31. Figure 3 is incorrectly illustrating the invention. The objection is repeated herein. Please note that this objection has been repeated without responses from the Applicant. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

- Claim 9 recites "at least one slot defined in the first plate." Figures 3 and 4 illustrate only one slot 31 in the second plate 1, the sliding plate, wherein the two

limit switches extending into. In the previous Office Action, the Examiner had expressed that this claimed feature should be --slot defined in the second plate--. However, it appears that the Applicant does not agree that the slot 31 is defined in the sliding plate. The Examiner is at a lost of which slot is being claimed.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Liston.

Re: claim 1, Liston shows an adjustable pedal assembly, as in the present invention, comprising: a stationary plate 30, a sliding mounting plate 28 that is movable relative to the stationary plate wherein the sliding mounting plate receives at least one pedal 26, and a drive mechanism 40 located above the sliding mounting plate for linear displacement of the sliding mounting plate relative to the stationary mounting plate and at least one interface means 26 between the stationary plate and the sliding mounting plate.

Re: claim 20, Liston further shows interference means comprises at least one pin 26 located on the sliding mounting plate 28 that engages at least one slot 86 defined on the stationary plate 30.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liston in view of Sitrin (USP 4,875,385).

Re: claim 4, Liston's pedal assembly, as rejected in claim 1, lacks a drive mechanism comprises a drive screw. Sitrin teaches a drive screw 24 for an adjustable pedal assembly that is compact and convenient for the driver to automatically adjust the pedal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Liston's assembly to include a drive screw as taught by Sitrin in order to provide the convenience of automatically adjusting the pedal instead of having to manually adjust it.

Re: claim 11, Sitrin further shows the drive screw 24 is adjacent to a means 28 for operating the drive screw 24.

Re: claims 12-14, Sitrin further shows shield 14e partially covering the drive screw 24 wherein said shield 14e is displaced with the sliding plate 14 but is stationary relative to the sliding plate 14.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bortolon in view of Asano et al.

Re: claim 2, Bortolon shows a pedal assembly, as in the present invention, comprising a first plate 20, a second plate 18 located above the first plate and is movable relative to the first plate wherein the second plate receives a foot operated brake pedal 12, and a movement mechanism 23, 21, 28 for adjusting the position of the second plate relative to the first plate. Bortolon lacks an electronic control mechanism comprising at least two switches. Asano et al. teach the concept of limiting the adjustment of a foot pedal by an electronic control mechanism using at least two limit switches in column 4, lines 60-65. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bortolon's pedal assembly with an adjustment limiting capability as taught by Asano using at least two limit switches to ensure that the pedal assembly is properly operated within the desirable adjustment range.

9. Claims 3, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortolon.

Re: claim 3, Bortolon shows an pedal assembly, as in the present invention, comprising a first plate 20 mounted horizontally relative to floor 40, a second plate 18 that is movable relative to the first plate wherein the second plate receives a brake pedal 12 and a foot operated throttle control pedal 14, and means 23, 21, 28 for displacing the second plate relative to the first plate and is connected to both plates. Bortolon discloses the claimed invention except for the drive mechanism being located above the sliding mounting plate. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have located the drive mechanism above

Art Unit: 3683

the sliding mounting plate, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Re: claim 6, figure 2 and column 2, lines 3-12, show the foot operated throttle control pedal 14, 15 to be electronic foot operated throttle control pedal.

Re: claim 8, figure 3 shows drive screw 21 and motor 23.

Allowable Subject Matter

10. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 16-19 and 21 are allowed.

Response to Arguments

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan Nguyen whose telephone number is 703-308-8347.

The examiner can normally be reached on M-F, 8 to 4:30.

Art Unit: 3683

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lan Nguyen
Patent Examiner
Art Unit 3683



11/5/04